




OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

September 13, 2011

TO: Valerie Ervin, Council President

FROM: Isiah Leggett, County Executive 

SUBJECT: Bill 25-11, Offenses - Curfew – Established

This memorandum responds to questions regarding Bill 25-11, Offenses - Curfew – Established that Council staff forwarded to Executive staff on behalf of the Council on July 28, 2011, August 15, 2011 and August 19, 2011, respectively. Thank you for the opportunity to provide this input. I look forward to working with Council as it moves forward with its consideration of this bill.

1. Please explain in detail the justification for imposing this type of measure?

Establishing a limited youth curfew in the County is a proactive step that is intended to help reduce juvenile violence, juvenile gang activity, and juvenile crime in the County, prevent disturbances of the public peace, protect minors from each other and other persons, and support parental responsibility for children.

A youth curfew will help police head off juvenile crimes before they occur, protect minors from being lured into participating in criminal activity or becoming the victim of crimes, and promote parental involvement in a child's upbringing. The youth curfew established by Bill 25-11 is a balanced approach that includes various exemptions for youth who are engaged in necessary and worthwhile activities during curfew hours.

Montgomery County is particularly vulnerable to becoming a place where youth congregate in large numbers late at night because Prince George's County and the District of Columbia already have curfew laws. One recent example of that vulnerability was an incident over the July 4th weekend which involved a large group of about 70 youth who congregated in the Silver Spring Central Business District (CBD). As police sought to gain control of the situation, the large group broke into smaller groups and began moving around the area, avoiding the police but alternatively fighting with each other and ultimately resulting in a serious stabbing. Despite the immediate and high number of responding officers the situation was difficult to control. It was later learned in police interviews that many of the youth had flocked to Silver Spring because of the curfews in Prince George's County and the District of Columbia.

The public safety challenges associated with youth who congregate late at night in public places are not limited to areas of our County that are easily accessible from neighboring jurisdictions or to situations involving youth from other jurisdictions. The recent “mass theft” which occurred in August involving approximately 25 County youth at a 7-Eleven store in Germantown just before 2:00 a.m. is a glaring example of the challenges that exist in various parts of the County.

Police are not able under current law to adequately manage large groups of teens that gather for the purpose of intimidation, violence, or criminal activity. A limited youth curfew law is an important tool to help police officers prevent problems that arise out of these challenging situations. A curfew would help prevent our youth, other residents, and businesses from becoming victims of unlawful behavior close to and during the curfew hours. Preventing problems is easier and less costly than fixing problems after they escalate.

Bill 25-11 would give County police officers the same tool that Prince George’s County and District of Columbia police officers have to prevent unlawful behavior and victimization. It would help the County manage the influx of youth coming from those curfew-regulated jurisdictions who engage in criminal activity as well as problems that arise when large groups of our own County youth congregate late at night. It would protect minors from being lured into crime or becoming a victim of crime. A by-product of the curfew law could be assisting parents and guardians who have difficulty getting their teens to adhere to family-established curfews.

2. What data do we have on juvenile crime in the county? Is it trending up? What about crime against juveniles? What data do we have on the time of day that crimes committed by or against juveniles occur?

In recent years the number of juvenile arrests and the number of juvenile arrests as a percent of total arrests have increased in the County. The total number of juvenile arrests increased from 1,548 in 2006 to 2,626 in 2010 (see **Attachment A**). During that same time, the total number of adult arrests declined. As a result, juvenile arrests as a percent of total arrests increased from 12% in 2006 to 21% in 2010 (see **Attachment A**).

Between 2009 and 2010, the total number of juvenile arrests increased by 730. As shown in the table below, that increase is due in large part to the increase in the number of juveniles arrested for larceny, assault, and controlled dangerous substance (CDS) offenses.

	2009	2010	Change
Larceny	438	691	57.8%
Assault	143	293	104%
CDS	440	594	35%

The number of adult arrests during curfew hours remained fairly steady in 2009, 2010, and 2011, with a slight decrease from 2,046 to 1,972 between 2009 and 2010. See **Attachment B**. Regardless of that decrease, these numbers indicate that there is significant adult criminal activity during curfew hours which poses a risk to the safety of minors who may become victims or be lured into participating in criminal activity. Juvenile arrests during curfew hours decreased somewhat from 774 to 646 between 2009 and 2010 but are still at unacceptably high levels. See **Attachment B**.

With one caveat, **Attachment B** shows the number of arrests (adult and juvenile) for all crimes that were made during the proposed curfew hours in 2009, 2010, and the first seven months of 2011. In the aggregate, there were 5,139 adult arrests and 1,766 juvenile arrests made between January 2009 and July 2011 during the 6-hour period between 11:00 p.m. and 5:00 a.m.

The one caveat relates to available data for juvenile arrests as captured in the Juvenile Justice Information System (JJIS). The actual time of arrest is not captured in JJIS, only the "start time" of the crime. Typically, for crimes such as robbery or assault, the nature of the crime allows for collection of better data regarding the exact time of the crime. Arrests for "crimes against a person" are more contemporaneous with the occurrence of the crimes so the "arrest time" is more likely to be accurately related to the "start time" for the crimes. However, for a crime such as burglary or theft, the exact time of the occurrence is not known and a suspect typically is not seen. For these types of crimes, if an arrest is made at any time, the "arrest time" is shown as the "start time" for the event. For example, if a report shows that a burglary occurred between 8:00 a.m. and 5:00 p.m. and the juvenile was arrested at midnight, the arrest would not be reflected in **Attachment B**. On the other hand, if a burglary or theft occurred at midnight and the juvenile was arrested at 8:00 a.m., the arrest would be reflected in **Attachment B**.

Attachment C provides a strict "apples to apples" comparison of available data by showing the number of arrests (adult and juvenile) for all crimes except burglary and theft that were made during the proposed curfew hours in 2009, 2010, and the seven months of 2011. In the aggregate, there were 4,609 adult arrests and 1,515 juvenile arrests made between January 2009 and the first seven months of 2011 during the 6-hour period between 11:00 p.m. and 5:00 a.m.

In addition to adult and juvenile arrests that occur during curfew hours, police officers receive thousands of calls for service each year during the proposed curfew hours that result in written reports of crime for which no arrest is made or for which criminal or civil citations are issued without an arrest. **Attachment D** shows data relating to calls for service in 2009, 2010, and first seven months of 2011 between 11:00 p.m. and 5:00 p.m.

In terms of data relating to juveniles who are victims of crime, the table below shows that for 2008, 2009, and 2010, juveniles accounted for approximately 4% of all victims who reported incidents of crime in the County.

	All Victims	Juv. Victims	% Juv. Victims
2008	58,992	2,475	4.2%
2009	55,292	2,075	3.8%
2010	49,537	2,009	4.1%

This table is based on CJIS incident data for all reported events with an event classification of less than 2900 (and excludes reported incidents that were later determined to be unfounded). For a list of event classification codes, see **Attachment H**.

The following table shows the number of reported robbery incidents with a juvenile victim that occurred between 11:00 p.m. and 5:00 a.m. during 2008, 2009, and 2010:

	2008	2009	2010
Robbery incidents with a juvenile victim occurring between 11:00 p.m. and 5:00 am	35	32	32

This table reflects the number of robbery incidents with at least one juvenile victim. It does not reflect the actual number of juvenile victims of robbery incidents because an incident could have more than one victim.

The following table shows the number of assault incidents with a juvenile victim that occurred between 11:00 p.m. and 5:00 a.m. in 2008, 2009 and 2010.

	2008	2009	2010
Assault incidents with a juvenile victim occurring between 11:00 p.m. and 5:00 am	100	71	97

This table reflects the number of assault incidents with at least one juvenile victim. It does not reflect the actual number of juvenile victims of assault incidents because an incident could have more than one victim.

3. What alternative strategies exist to combat the issues the bill is designed to address? Have other alternatives been tried? What was the result?

Nothing other than a youth curfew law will eliminate the vulnerability that exists for Montgomery County because Prince George's County and the District of Columbia have curfew laws that incentivize youth to congregate in Montgomery County late at night. Nothing other than a youth curfew law gives police officers the authority to require youth who are congregating late at night in large groups to go home. However, a youth curfew is only one tool for addressing challenges relating to juvenile crime and victimization. It is not a panacea.

It is incumbent upon the County to take all reasonable steps to reduce the personal, social, and economic costs associated with criminal activity. A youth curfew is not a substitute for vigorous and creative law enforcement activities and positive youth development programs. However, it is a widely accepted and cost effective tool for helping to reduce juvenile crime and protect juveniles from becoming the victims of crime.

The County is involved in numerous efforts to support positive youth development and to serve youth along the continuum of prevention, intervention, and suppression. The Police Department, Department of Health and Human Services (DHHS), Recreation Department, State's Attorney's Office, Montgomery County Public Schools (MCPS), and Department of Corrections and Rehabilitation all have a role in these efforts. Although significant budget constraints in recent years have restricted important components of many County programs relating to positive youth development, my goal is to return to more vigorous programs as soon as possible.

In recent years, Executive staff participated in various Council briefings on the County's efforts to support positive youth development, including the: (1) November 10, 2009 full Council briefing on programs and activities aimed at decreasing incidents of juvenile crime, increasing student performance, and creating a better environment for County youth; (2) June 24, 2010 joint briefing of the Public Safety and Health and Human Services Committees on coordination of prevention, intervention, and suppression efforts for individuals who are or have been gang-involved; and (3) October 21, 2010 joint briefing of the Public Safety and Health and Human Services Committees on coordination of gang prevention activities, including strategies and services provided to youth and their families to prevent gang involvement at all levels. For further information relating to the programs and activities discussed at these meetings, see the following Council staff packets:

November 10, 2009 – Council Briefing
http://www.montgomerycountymd.gov/content/council/pdf/agenda/col/2009/091110/20091110_10.pdf

June 24, 2010 – PS/HHS Committee Meeting
http://www.montgomerycountymd.gov/content/council/pdf/agenda/cm/2010/100624/20100624_PSHHS1.pdf

October 21, 2010 – PS/HHS Committee Meeting
http://www.montgomerycountymd.gov/content/council/pdf/agenda/cm/2010/101021/20101021_HHSPS1.pdf

The Police Department uses a variety of crime prevention, intervention, and suppression strategies throughout the County. These strategies are targeted to the challenges and needs that exist in particular areas of the County. The Police Department's resources have been constrained by our fiscal challenges in recent years but I am committed to implementing the Police Department Staffing Plan developed several years ago as soon as fiscal conditions allow. That plan calls for a phased-in increase in the total number of police officers from a previous low of 1,100 to a high of 1,350. Although budget difficulties have precluded the County from attaining that goal over the recommended five-year period, the County now has approximately 1,150 police officers and I am committed to reaching the goal of 1,350 police officers as soon as possible. This would allow the County to reinvigorate important programs relating to our youth, including our community liaison officers and school resource officers.

DHHS has taken a leadership role in three programs that are particular relevant here: (1) the Countywide Youth Violence Prevention Coordinator (YVPC) Strategy; (2) the Central Business District (CBD) Intervention Strategy; and (3) the Regional Intervention Strategy.

The YVPC Strategy includes a Street Outreach Network (SON) comprised of 4 full-time staff that have engaged a total of 380 gang-involved youth in the past two years. The SON staff have targeted hot spot communities like Maple Avenue, Bel Pre, Briggs Chaney, Lockwood, White Oak, Downtown Silver Spring, Wheaton, Rockville, Gaithersburg, Montgomery Village, Germantown, and Damascus. These strategies include weekly projects that engage youth in positive, life affirming activities such as:

- DJ/Life Skills Program which serves 40 youth per week;
- Boxing/Life Skills Program that serves about 20 youth per week;
- Graffiti alternative/Life Skills Program which serves about 15 youth per week;
- Young Women's Support and Empowerment Group which serves about 20 youth per week; and
- Soccer/Team building/Life Skills Program that serves about 30 youth per week.

In addition, SON staff maintains daily engagement in County schools, malls, recreation centers, libraries, youth programs, homes and neighborhood of gang-involved youth. Finally, one part-time grant-funded SON staff member provides 2 weekly job training and readiness sessions to 20 youth. This initiative began in March of this year under ARRA grant funds. Currently eight youth have been successfully hired and continue to maintain employment.

The YVPC continues to educate youth and parents about the consequences of gang activity throughout the County. This work is done in partnership with a detective from the County Gang Unit. In addition, the YVPC continues to work with many community partners and community associations in order to build their capacity to address gang and youth violence throughout the County. The YVPC has provided workshops and trainings to over 200 parents in MCPS on accessing intervention services in the County. The YVPC has provided workshops on the consequences of gang life and bad choices to over 100 youth in MCPS.

As a result of a couple of high profile incidents that occurred last summer in the Silver Spring CBD, the YVPC along with SON staff were engaged by you to be a part of a multi-agency response team to address these incidents. A CBD Intervention Strategy was initiated which included SON staff doing targeted engagement of youth from Maple Avenue Crew, Hampshire Towers (HT), and 38 Mob from Briggs Chaney. The SON also sought to implement community-based intervention projects in Takoma Park and the Briggs Chaney Community; however, SON staff faced logistical issues that made it extremely difficult to maintain those efforts consistently. In addition, the Crossroads Youth Opportunity Center (CYOC) focused on serving youth from these communities as well. Last year prior to the high profile incidents which led to development of the CBD Intervention Strategy, the CYOC served about 8 youth from these communities. SON staff now serve 44 youth from these communities. Through these efforts the ongoing disputes between these communities de-escalated.

In addition to the CBD Intervention Strategy, HHS developed a Regional Intervention Strategy which calls for the YVPC to meet on a quarterly basis with counterparts from Prince George's, the District of Columbia, and Northern Virginia in order to discuss regional activity by these particular groups. In addition, there was a proposal to have street workers meet on a quarterly basis to share information and develop strategies to address the regional nature of this activity. Due to the many budgetary challenges faced by all of the partner jurisdictions, this effort became logistically difficult to maintain, although the coordinators from each jurisdiction continue to meet on a quarterly basis. As a result of increased conflict between Montgomery County youth and District of Columbia youth, the SON and District of Columbia intervention workers will be meeting bi-weekly starting this fall to develop a regional strategy for engaging youth and reducing conflicts among the various groups.

The Department of Recreation has carried out successful evening programs targeted to adolescent youth for a number of years. Programs targeted to at-risk adolescent youth have included battle of the bands, dances, hosting post-prom parties, midnight basketball, midnight soccer, late movies, pool parties, and more. These events have been credited by law enforcement personnel, youth advocates, and youth themselves for providing positive and supervised activities that have led to a reduction in juvenile delinquency.

At the height of its budget, the Department of Recreation had dedicated staffing who were charged with administering a wide variety of teen programming which included weekend and evening activities every month throughout the County. However, as a result of the budget challenges over the last four years and reductions to the Department's budget, these programs and staffing have been significantly scaled back. The program budget for after-hour events in FY12 was cut completely. These programs are well regarded deterrents to juvenile delinquency and I support the reestablishment of these efforts with appropriate resources as the County's fiscal situation improves. In the meantime, the Department is leveraging some existing resources to carry out an evening indoor league during the winter months and has established a Youth Café model in partnership with Councilmember Navarro and DHHS.

- 4. How will the law be enforced when a movie or show at the Fillmore lets out late (near or after curfew hour). Are minors allowed to walk home? Are they allowed to walk to the Metro to get home? Are the Police really only looking to use this when a group is hanging out rather than moving along?**

I submitted recommended amendments to Bill 25-11 to the Council on August 31, 2011. **See Attachment G.** Those amendments included a recommendation to expand the list of exemptions to the curfew to include a minor who is attending or returning home from, without any detour, an event at a place of public entertainment, including a movie, concert, play, or sporting event. Under this amendment, if a movie or show at the Fillmore lets out close to or after the start of the curfew, youth will be allowed to walk directly home or to the Metro to go home.

Under Bill 25-11, a police officer may issue a citation for a curfew violation only after (1) the officer determines that an individual is under the age of 18 and not engaged in activities that are exempt from the curfew, and (2) the juvenile refuses to go home after being asked to do so. In situations where an officer finds a need to enforce the curfew violation, the officer would try to ascertain what the juvenile is doing. If the juvenile can explain his or her presence and is either eligible for a curfew exemption or on the way home, the officer would be expected allow the juvenile to go on his or her way.

5. Related to question #4, should there be an exception for movies, concerts, and other entertainment activities?

See answer to Question 4.

The County does not have authority to require a municipality to adopt a curfew law. However, if Bill 25-11 is enacted, it would apply by default in some municipalities unless they pass laws rejecting it. According to the County Attorney, Bill 25-11 would apply by default in all municipalities except Gaithersburg, Garrett Park, Kensington, Laytonsville, Poolesville, Rockville, Somerset, and Washington Grove. These eight municipalities could pass laws to make Bill 25-11 applicable in their jurisdictions. Likewise, any municipality to which Bill 25-11 would apply by default could pass a law to reject it.

6. If the law as proposed requires a minor to be charged with a criminal offense, should the County seek State legislation to make violation of a curfew by a minor an offense that remains a juvenile matter rather than creating a permanent arrest record?

The bill currently specifies that a curfew violation is a Class A violation but does not specify whether the violation is criminal or civil. This is similar to other existing County Code provisions relating to certain types of offenses, which can be enforced either criminally or civilly. However, based on advice from the State's Attorney, I have recommended that the bill be amended to make a curfew violation a Class B civil offense that is punishable by a maximum fine of \$100 for a first offense and \$150 for a second offense. **See Attachment G.** If arrest authority is needed in a situation involving a curfew violation, the State's Attorney believes that a police officer could use existing authority granted under §10-201(c)(3) of the Criminal Law Article to arrest an individual who disobeys an order made by a police officer to prevent a disturbance of the public peace.

7. The bill allows the Police to place a minor who has violated curfew in the custody of the Department of Health and Human Services, who can release the minor at 5:00 a.m. the next morning. Is this feasible? How would this work? Where would HHS keep them?

According to the County Attorney, the County does not have authority under State law to take a juvenile into custody for a curfew violation unless, the violation is a criminal offense and the police officer is using arrest authority. As discussed in my answer to Question 7, I have recommended that the bill be amended to make a curfew violation a civil offense. That amendment includes deletion of any language in Bill 25-11 that relates to placing a juvenile in the custody of DHHS.

**8. Have curfews been effective in other jurisdictions that have adopted them?
What has been the effect in Prince George's County and the District of
Columbia?**

Many cities have adopted youth curfew laws. **Attachment E** shows the results of a 1997 survey of 347 cities with a population over 30,000 conducted by the U.S. Conference of Mayors. Four out of five cities in that survey (276) had a nighttime curfew. Of those cities:

- 90% (247 cities) said that enforcing a nighttime curfew is a good use of a police officer's time;
- 93% (257 cities) said that a nighttime curfew is a useful tool for police officers; and
- 88% (236 cities) said that nighttime curfew enforcement helps to make streets safer for residents.

The survey included comments from numerous city officials which reflected a belief that a curfew is a proactive way to combat youth violence, involve parents, deter future crime, prevent "gathering" (which also meant fewer calls for service to the police), keep the "good" kids good and the at-risk kids from becoming victims or victimizers, reduce late-night traffic, make residents feel safer, make it easier to find runaways, make it harder for criminals to hide from the police during curfew hours because there are fewer people with which to blend in, reduce graffiti and vandalism, and reduce opportunities for gang recruitment and gang activities.

In 2000, the Regional Community Policing Institute at Wichita State University conducted a survey of 446 police departments serving populations of at least 15,000. See <http://webs.wichita.edu/depttools/depttoolsmemberfiles/rcpi/Policy%20Papers/Curfew%20Research.pdf>. This report concluded that "[t]he data strongly support the belief among respondents that curfews were an effective tool for reducing various crimes." Most noteworthy, according to the report, was that 93.5% of respondents agreed that curfews had an effect on reducing vandalism, 89.1% agreed they had reduced graffiti, 85.7% agreed curfews contributed to the reduction of gang activity, 84.7% agreed that curfews reduced rates of nighttime burglary, and 81.1% agreed that curfew enforcement had reduced auto theft.

Numerous jurisdictions have reported success after implementing curfew laws. Dallas and New Orleans provide two examples of such self-reporting. The Dallas Police Department reported that three months after the enactment of a curfew law juvenile victimization during curfew hours declined by 17.7% and juvenile arrests during curfew hours dropped by 14.6%. New Orleans reported that a dusk-to-dawn curfew enacted in that city was influential in decreasing the incidents of juvenile arrests by 27% in the year after its adoption.

The study available through the following link provides an example of research that supports the effectiveness of curfew laws:

http://www.econ.berkeley.edu/~pkline/papers/curfews_resubmit.pdf. *The Impact of Juvenile Curfew Laws on Arrests of Youth and Adults* (August 2011), Patrick Kline, UC Berkeley/NBER.

This study reviewed data from 54 cities with curfew laws and concluded that: "Overall, curfews appear to have important effects on the criminal behavior of youth. The arrest data suggest that being subject to a curfew reduces the number of violent and property crimes committed by juveniles below the curfew age by approximately 10% in the year after enactment, with the effects intensifying substantially in subsequent years for violent crimes."

However, it is important to note that the scientific and statistical research on the effectiveness of curfew laws is mixed and studies can be found to support both sides of the issue. Numerous stakeholders and academics have noted that there has been no comprehensive statistically valid study regarding the effectiveness of curfew laws. Such a study would be extremely difficult to conduct, time consuming, and expensive because it would have to account for all of the different variables relating to: (1) demographics of particular jurisdictions (population size, income, employment rates, age distribution, etc.); (2) differences in the curfew laws in various jurisdictions (curfew hours, age of individuals subject to the curfew, exceptions, etc.); and (3) crime rates in any given jurisdiction (laws in place in neighboring jurisdictions, other law enforcement initiatives, etc.). In considering the existence of studies on both sides of the issue, one court noted that this reality "simply illustrates that proving broad sociological propositions by statistics is a dubious business." See *Schleifer et. al. v. City of Charlottesville*, 159 F.3d 843, 849 (4th Cir. 1998). In this regard, it is important to note that courts do not require legislative bodies to have scientific or statistical "proof" before acting on a policy decision. Legislative bodies may act on the basis of information from many sources, including (but not limited to) local crime data, surveys of public opinion, news reports, national crime data, and experience in other jurisdictions.

With regard to Prince George's County, a 2003 study showed that arrests of curfew-age youth decreased after the curfew was implemented but concluded that it could not prove with certainty that the curfew was the cause of the decrease in juvenile arrests. For a copy of that study, see following link: <https://www.ncjrs.gov/pdffiles1/nij/grants/200520.pdf>. With regard to the District of Columbia, Police Chief Cathy Lanier advised me that the District experienced a 50% reduction in juvenile victims of violent crime in public spaces and a 43% reduction in juveniles arrested during curfew hours after the District imposed a 10:00 p.m. curfew during a 2006 crime emergency. Although a number of public safety initiatives were launched during that emergency, the decreases in juvenile victims and juvenile arrests during the curfew were significantly higher than the decreases during non-curfew hours. During non-

curfew hours, the District experienced only a 3% reduction in juvenile arrests and a 5% reduction in juvenile victims of violent crime in public spaces.

On a related note, Chief Lanier and Prince George's County Police Chief Mark Magaw both personally advised me last week that their respective curfew laws are very important law enforcement tools in their respective jurisdictions.

10. One option could be to limit the curfew to certain parts of the County. Is this a feasible option? If so, which portions of the County would you apply the curfew?

I believe that the curfew law should apply Countywide. A curfew that applies in only certain parts of the County would simply incentivize some youth to congregate in the parts of the County that do not have a curfew. The problem would shift across the street, just outside the CBD, or to other parts of the County.

Crimes committed by or against juveniles occur throughout the County and are not concentrated in one or two police districts or locations. The County estimates that approximately 1300 gang members currently reside in the County and gang-related crime can occur anywhere. The County, its businesses and residents have made enormous investments of time, money and effort to create vibrant, culturally rich and interesting venues to which all are welcome. However, the violence that occurred in Silver Spring over the July 4th weekend, the mass theft that occurred in Germantown in August, and other types of criminal activity and victimization can occur anywhere.

11. What is the estimated fiscal impact of Bill 25-11?

Bill 25-11 would have no fiscal impact on the County. See **Attachment F** for the Fiscal and Economic Impact Statement prepared by the Office of Management and Budget for this bill.

12. What is the estimated economic impact of Bill 25-11?

It is not expected that Bill 25-11 will have an economic impact on private businesses in the County. See **Attachment F** for the Fiscal and Economic Impact Statement prepared by the Office of Management and Budget for this bill.

- 13. To our knowledge, there are 2 court cases about curfews that are particularly on point: *Schleifer v. Charlottesville* (4th circuit) and *Ashton v. Brown* (Maryland Ct of Appeals). How does Bill 25-11 match up with the criteria in those cases?**

Bill 25-11 is similar to the curfew law upheld by the Fourth Circuit in *Schleifer v. Charlottesville*, 159 F.3d 843 (4th Cir. 1998). In that case, the Fourth Circuit upheld a Charlottesville curfew law that provided exceptions for activities where minors were accompanied by a parent, in supervised activities, in interstate travel, on property abutting parents' residence, emergencies, and when exercising their First Amendment rights. The court held that minors' rights were not coextensive with that of adults. It also held that parents did not have an unqualified right to raise their children that could trump every government regulation. The law was reasonably related to the important governmental interests of preventing crime, protecting juveniles, and strengthening parental responsibility. It was reasonable to apply the restrictions to minors. The ordinance was not void for vagueness because it fairly provided minimal guidelines to govern enforcement and gave reasonable notice of the proscribed conduct.

Bill 25-11 is also similar to the District of Columbia curfew law that was upheld in *Hutchins v. District of Columbia*, 188 F.3d 531 (D.C. Cir. 1999) (*en banc*).

Bill 25-11 does not suffer from the infirmity that doomed the Frederick City curfew law in *Ashton v. Brown*, 339 Md. 70 (1995). In that case, the Maryland Court of Appeals struck down a Frederick City curfew law that contained an exception for "a child attending a cultural, scholastic, athletic, or recreational activity supervised by a bona fide organization." The court found that the term "bona fide organization" was unconstitutionally vague. Bill 25-11 does not include a similarly vague exception. It contains an exception for a minor who is "in attendance at an official school, religious, or other recreational activity sponsored by the County, a civic organization, or another similar entity that takes responsibility for the minor" or who is "returning home from, without any detour or stop, an official school, religious, or other recreational activity supervised by adults and sponsored by the County, a civic organization, or another similar entity that takes responsibility for the minor."

- 14. Do you have any suggested amendments to the Bill?**

As mentioned previously in my answers to Questions 4, 5, 7, and 8, I submitted recommended amendments to Council on August 31, 2011. See **Attachment G**.

15. Please specify exactly how this law will be enforced? Will it be based on age or behavior, or both?

Enforcement will be based on age, behavior, and any other factors in the totality of circumstances that lead a police officer to develop a reasonable belief that an individual is under 18 and not exempt from the curfew. When an officer is on patrol and sees someone who appears to be under age, the officer can ask that person his or her age. If the individual indicates that he or she is a minor or the officer is able to form a reasonable belief that he or she is a minor based on other factors (e.g., statements of witnesses, appearance, etc.), the officer will order that person to go home. If the individual does not go home after being asked to do so, the officer may issue a civil citation. If the individual still refuses to go home after being issued a civil citation, the officer may arrest the individual for failure to obey a lawful order of a police officer made to prevent a disturbance of the public peace.

I firmly believe that the vast majority of youth under the age of 18 in the County would comply with a curfew law. This would have a positive impact on our community in all of the ways that were referenced by city officials in the U.S. Conference of Mayors survey discussed above. As reflected in that survey, it would reduce the number of youth gatherings which lead to calls for service to the police, keep the "good" kids good and the at-risk kids from becoming victims or victimizers, reduce late-night traffic, make residents feel safer, make it easier to find runaways, make it harder for criminals to hide from the police during curfew hours because there are fewer people with which to blend in, reduce graffiti and vandalism, and reduce opportunities for gang recruitment and gang activities.

16. Please provide detail on the process you will undergo once you remove a child from the street. Does HHS take over at some point? If so, what costs are involved? Is it feasible to require the Police take a minor in violation of curfew to the Police Station?

See responses to Questions 6 and 7.

I have recommended that the bill be amended to make a curfew violation a civil offense. **See Attachment G.** Since the County does not have authority to take an individual into custody for a civil offense, I have also recommended deletion of the language that relates to placing a juvenile in the custody of DHHS.

17. Will this law push juvenile crime to earlier hours?

We have no conclusive evidence that this will occur.

18. How will you verify the exception “running errands?” Will you need to contact a parent/guardian? What if you cannot?

Verification of the errand exception will be situational. If a minor says “I’m going to the drug store for my Mom” and the child is loitering on a street corner nowhere near a drug store, the officer would likely have reasonable cause to order the minor to go home and, if the minor does not do so, to issue a civil citation. Parents can also be called to verify whether a minor is running an errand.

19. Please clarify what it means to “remain” on the premises? Is the violation the act of being out past curfew, or is the violation the act of remaining once asked to leave by police?

A minor violates the curfew law by remaining during curfew hours in a public place or private establishment to which the public is invited after being asked to go home. The term “remain” is defined in the bill to mean “to linger, stay, or fail to leave a public place or establishment when requested to do so by a police officer or the owner, operator, or other person in control of the public place or establishment.”

20. Please explain steps you will take to ensure that this law would not encourage racial profiling.

This question seems to assume that Bill 25-11 encourages racial profiling or that our Police Department would engage in racial profiling if Bill 25-11 is enacted. There is no evidence to support either of these assumptions. Our Police Department has not historically had a problem with racial profiling. There is no reason to believe that the enactment of a youth curfew law will prompt members of the Police Department to engage in this unlawful practice in the future.

In fact, a curfew law would lend itself to profiling strictly by age. Remember, profiling, in and of itself, is not illegal. Police officers criminally profile people everyday based on their behavior and the totality of the circumstances of their actions (e.g., when, where, and how things are happening). Proper training of police officers is the key to avoiding unlawful profiling. At recruit training and during in-service training each year, we provide our officers with a foundation which allows them to understand when they can stop someone, when they can compel someone to identify themselves, and when they can arrest someone. Strong policies are in place which prohibit the use of race, gender, ethnicity, or religion as a reason to stop, search or arrest someone.

The County goes to great lengths to hire the right people to be police officers. We test for many personality and character traits and eliminate anyone for employment that demonstrates any identifiable bias that would indicate a propensity for abusing law enforcement authority or otherwise harming the public interest. I have confidence in our hiring process and the integrity and character of our police officers. To insinuate that a youth curfew law, or any other law, would lead these same police officers to suddenly engage in unlawful racial or ethnic profiling is unfair to our employees and without basis in fact.

The Police Department intends to develop guidelines governing enforcement of the curfew law to assist in training police officers and ensuring fair and consistent enforcement throughout the County. The County will continue to seek to hire the right people, train them well, set high standards, investigate complaints of misconduct with due diligence, and if warranted, punish those who do not live up to required standards.

- 21. It is my understanding that the curfew proposal allows for discretion in enforcement. In other words, the police department does not intend to enforce a ban on all minors being out in public, but rather intends to enforce the curfew selectively in response to problematic situations. First, can the executive branch please spell out this intent more clearly? Second, can the executive branch discuss any constitutional issues that arise, and how they are resolved, from laws that are intended to be enforced in this manner. Related to the second question, can the executive branch propose any safeguards that could accompany the curfew to monitor whether it is being enforced in a fair manner, for example using related examples around racial profiling – gathering of information about stops, reports, etc.**

Every criminal law reposes some discretion in those who must enforce it. The Police Department intends to develop guidelines governing the exercise of discretion in the context of enforcing the curfew law to assist in training police officers and ensuring fair and consistent enforcement throughout the County. Bill 25-11 and my recommended amendments to the bill were written in consultation with the County Attorney to avoid any constitutional issues. As discussed above in the response to Question 13, Bill 25-11 is similar to other curfew laws that have been upheld by the courts. I am open to exploring any amendments that Council believes are necessary to ensure that Bill 25-11 is enforced in a fair and objective manner, including a requirement to collect and report relevant data.

Valerie Ervin, Council President
September 13, 2011
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Gabe Albornoz, Director, Department of Recreation
Kathleen Boucher, Assistant Chief Administrative Officer
Marc Hansen, County Attorney
Tom Manger, Chief of Police
Amanda Mihill, Legislative Attorney